86 No. 1933

Supreme Court, U.S.
FILED
MAY 21 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

RICHARD J. HELLER,

PETITIONER,

VERSUS

CONSOLIDATED RAIL
CORPORATION AND THE
NRAB, FIRST DIVISION,

RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Richard J. Heller,
Pro Se With and a Servant,
Messenger of Jesus Christ
"Son of God"
PO Box 5222
Phillipsburg, NJ 08865
Phone - None

50pp

QUESTIONS PRESENTED FOR REVIEW

I. Whether the Lower Court's failed to comply to and failed to enforce the laws laid down by the Government of the United States?

Was not the stated laws made and laid down for the protection and to uphold truth and justice for all?

II. Parties to the proceeding:

(a) U.S. Court of Appeals, for the Third Circuit.

(b) U.S. District Court, District of New Jersey.

(c) National Railroad Adjustment Board, First Division; hereinafter "NRAB".

(d) Consolidated Rail Corp.; hereinafter "Conrail".

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APPENDIX

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(1) Judgment Order of the United States Court of Appeals for the Third Circuit, No. 86-5776, dated March 19, 1987. . . . 1a

2) Opinion of the U.S. District Court, 86-0608 (GEB). Entered October 21, 1986. . . . . 3a

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3) NRAB Decision dated January 17, 1986. Award 23779, Docket 43435, Entered June 13, 1986 to the United States District Court, 86-0608 (GEB) . . 15a

4) NRAB letter to the petitioner and Conrail dated June 10, 1985 Re: C-4368 and entered June 13, 1986 to the United States District Court, 86-0608 (GEB) 23a

5) Conrail's letter to the petitioner and to the NRAB dated June 13, 1985 Re: C-4368 and entered June 13, 1986 to the United States District Court, 86-0608 (GEB). 25a

6) NRAB Circular B dated November 12, 1970 Re: C-4368 and

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entered June 13, 1986 to the United States District Court, 86-0608 (GEB). 26a

7) Judgment for rehearing denied by the United States Court of Appeals for the Third Circuit dated April 16, 1987, No. 86-5776. . . . . 28a

The Petitioner, Richard J. Heller, respectfully prays for a Writ of Certiorari issue to review the Judgments of the U. S. Court of Appeals, for the Third Circuit, entered on March 19, 1987 and Petition for Rehearing entered on April 16, 1987, No. 86-5776.

OPINION BELOW

October 21, 1986, the U. S. District Court granted Conrail a Summary Judgment, No. 86-0608 (GEB).

JURISDICTION OF THIS COURT

Jurisdiction of this Court is invoked under 28 U.S.C.A. § 1254 (57) - Railway Labor Act.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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(1) The Railway Labor Act 45 U.S.C.A.

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(2) The Rehabilitation Act of 1973, §§ 7(6), 501, 503, 504, 505(a)(2), as amended, 29 U.S.C.A. §§ 706(6), 791, 793, 794, 794A(a)(2); the Civil Rights Act of 1964, §§ 601, 604, as amended, 42 U.S.C.A. §§ 2000d, 2000d-3; the Education Amendments of 1972, § 901 et seq., 20 U.S.C.A. § 1681 et seq. 5

(3) The Doctrine of Laches. 3

STATEMENT OF THE CASE

(A) The basis for federal jurisdiction in the Court of first instance is under the Railway Labor Act 45 U.S.C.A. § 153 First (Q) for fraud and corruption by all members of the NRAB as:

(1) Conrail failed to comply to the Controlling Agreement rules #96(a) - physical disqualification and #97 - placement of physically restricted trainmen, pursuant to the Railway Labor Act 45 U.S.C.A. § 151a(5).

(2) Conrail failed to comply to the Railway Labor Act 45 U.S.C.A. § 153 et seq., Circular B, on May 24, 1985 and now Conrail, under the Doctrine of Laches, was and is barred from all Courts, thus, lost this case, clear cut and outright. See Appendix 23 through 28 and Cases.

CARROLL v. HOUSTON, 173 N.E. 657, 660, 341 ILL. 531.

"Laches" is such neglect to assert right as, with lapse of time and other circumstances, operates as bar."

PEOPLE v. PISARZEK, 35 N.Y. S. 2d 660, 661, 178 MISE. 611.

"Defendant was guilty of "Laches" in not perfecting his appeal in due time."

EDISON OYSTER CO. v. PIONEER OYSTER CO., 157 P. 2d 302, 308, 22 WASH. 2d 616.

"Laches" in a general sense is the neglect for an unreasonable length of time, under circumstances permitting diligence to do what in law should have been done."

KEISER v. WEIDMER, MO. APP. 283 S.W. 2d 914, 917.

"Laches" is the neglect for an unreasonable and unexplained length of time under circumstances permitting diligence to do what in law, should have been done."

BRODT v. BROWN, 172 A. 2d 152, 153, 404 PA. 391.

"Laches" is neglect for unreasonable and unexplained time under circumstances permitting diligence to do what in law should have been done."

(3) Conrail failed to comply to the Rehabilitation Act of 1973, Section 504, 29 U.S.C.A. § 701 et seq.; the Civil Rights Act of 1964, 42 U.S.C.A. § 2000 et seq.; the Education Amendments of 1972, 20 U.S.C.A. § 1681 et seq., and Conrail's very own Equal Employment Policy, Order A.d.O.06. and Conrail failed to comply to five of their very own doctor reports for the Petitioner to return to work dated 8-4-76, 3-17-80, 3-21-80, 3-25-80 and 3-25-80 and from the Petitioner's very own physician, Dr. Osterholm, dated February 4, 1980 and from U.T.U. letter dated December 8, 1980, and from seven letters from the Hon. Congresswoman Marge

Roukema, Congress of the United States, House of Representatives, Washington, D.C. 20515, dated April 19, 1983, July 16, 1984, July 16, 1984, August 20, 1984, August 29, 1984, August 31, 1984 and November 16, 1984. Intentional discrimination. See:

CONSOLIDATED RAIL CORPORATION v. DARRONE, USPA, 104 SCT. 1248, 465 US 624, 79 L.Ed. 2d 568 (1984).

"Provides that no otherwise qualified handicapped individual . . . shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Therefore, Petitioner, having alleged intentional discrimination, may recover backpay."

STATEMENT OF THE FACTS

1. The judgments of the NRAB and of the Lower Courts are fraudulent,

corrupt, null and void and without merit, ILLEGAL.

2. Without a trial, on the briefs only, knowingly and maliciously under fraud and corruption, the NRAB and the Lower Courts conspired against the Petitioner, stating matters outside the pleadings and failed to enforce the laws laid down by the Government of the United States of America, of which is clear contempt of the U. S. Courts.

3. Conrail's fraudulent answer of which the NRAB and the Lower Courts based their judgments on is excluded from this petition as stated has no legal right or say and cannot be used in a court of law.

REASONS FOR GRANTING CERTIORARI

(A) Under Rule 17(c) of this Court, the Lower Courts and the NRAB

decided important federal laws in conflict with applicable decisions of this Court and thereupon violating the rights of the Petitioner, passing over the rightful and true judgments.

(B) The Lower Courts infringed upon the rights and ability of Petitioner to obtain full judicial review and relief in these proceedings, denied his due process of the justice system, then despotically exercised their authority in favor of the Respondent's idle pleadings. Under fraud and corruption, the NRAB and the Lower Courts have made an illegal initial effort to cover up and confuse the straightforward issues of the facts and laws (the truth), intentional discrimination!

(C) The Courts have omitted the weightier matters of the laws, judgment,

mercy and of the truth and have let the truth undone.

(D) A trial is warranted. The Court must enforce the laws that the Lower Courts overlooked. It is of exceptional importance and is necessary to secure and maintain the protection of the laws laid down by the Government of the United States of America, of truth and to uphold justice for all.

(E) The United States Supreme Court granted certiorari, See:

WARD v. ATLANTIC COAST LINE R. CO., FLA. 1960, 80 S.CT. 789, 362 U.S. 396, 4 L.Ed. 2d 820.

"To consider issues presented with respect to plaintiff's alleged status as employee of defendant Railroad in light of two of its decisions, one of which was an intervening decision."

UNION PAC. R. CO. v. PRICE, NEV. 1959, S.CT. 1351, 360 U.S. 601, 3 L.Ed. 2d 1460.

"To decide important question whether former employee of Railroad could pursue a common-law remedy against Railroad for damages for his allegedly wrongful dismissal after havng chosen to pursue under the Railway Labor Act. Section 151 et seq., of Title 45 the statutory remedy which resulted in a determination by the National Railroad Adjustment Boad that his dismissal was justified."

CONCLUSION

Wherefore, Petitioner respectfully prays the Court will grant this petition to uphold truth and justice for all under Almighty God and Jesus "Son of God".

At all times hereafter relevant, the Petitioner was and is a citizen of the United States of America owing allegiance to his government and entitled to its protection and was and is an employee, Conductor of Conrail, and was and is on Social Security disability, from his injury suffered

while on duty as Conductor for Conrail, July 19, 1976, and was and is raised from the dead on June 6, 1983, by the will of God, through God's son, Jesus Christ, and the Holy Spirit and now Petitioner is with Jesus, and Jesus Christ is his attorney, as Petitioner died from his injury.

The Petitioner and his attorney, Jesus Christ of Nazareth, whom ye crucified, whom God raised from the dead, the stone which was set at nought of you builders, which is become the head of the corner, won this case righteously!

But all parties named herein turned into thieves and criminally robbed and stripped from Petitioner this case, his civil and human rights and the laws laid down by the Government of the United States of America made for the protection of all!

Petitioner needs and requires a determination of his employment status so that he may either receive his railroad retirement benefits or to permit him to return to work and for damages in excess of $13 million.

For intentional discrimination - backpay. . $600,000.00

For loss of future income. . . . . $7.4 million

For future hospitalization . . . . . $1.2 million

For loss of reputation $7.9 million

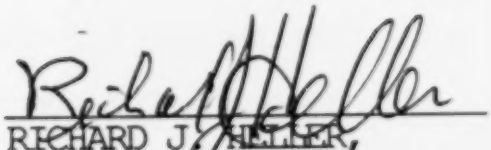
For criminal acts committed upon Petitioner . $5 million

For physical and mental suffering. . . . . $3 million

Luke 4 v. 17,18 and 19
Hebrews 11 v. 6
Hebrews 11 v. 33 to 40
Luke 6 v. 22 and 23
I John 5 v. 5
Revelation 6 v. 9,10 and 11
Revelation 21 v. 7 and 8

Revelation 21 v. 6
Luke 4 v. 21

In Jesus' Name,



RICHARD J. HELLER,
Petitioner, Pro Se With
and a Servant, Messenger
of Jesus Christ
"Son of God"

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Writ of Certiorari upon the following:

Capehart & Scatchard, P.A.
304 Harper Drive, CS 1041
Moorestown, NJ 08057

Office of the United States
Attorney
402 East State Street, Room 265
Trenton, NJ 08608

National Railroad Adjustment Board
First Division
175 W. Jackson Blvd., Room A-931
Chicago, IL 60604
ATTN: Nancy J. Dever, Exec.
Secretary

by depositing same in the United States Mails under certified mail, postage prepaid.

This 4th day of June, 1987.

RICHARD J. HELLER

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 86-5776

RICHARD HELLER

v.

CONSOLIDATED RAIL CORP., and THE NATIONAL RAILROAD ADJUSTMENT BOARD FIRST DIVISION

Richard Heller, Appellant

(Civil No. 86-608 - D.N.J. - Trenton)
DISTRICT JUDGE: Honorable Garrett E. Brown, Jr.

Submitted Under Third Circuit Rule 12(6)
March 17, 1987

BEFORE: SEITZ, STAPLETON and MANSMANN, Circuit Judges.

JUDGMENT ORDER

After consideration of the contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

ORDERED that attorney's fees shall not be assessed.

Costs taxed against appellant.

By the Court,

_____
Circuit Judge

ATTEST:

_____
Sally Mrvos, Clerk

DATED: Mar. 19, 1987

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

RICHARD HELLER,	)	Civil No. 86-608 (GEB)
Plaintiff,	)	
vs.	)	OPINION
CONSOLIDATED RAIL CORP. and THE NATIONAL RAILROAD ADJUSTMENT BOARD, FIRST DIVISION,	)	
Defendants.	)	

BROWN, District Judge

This opinion, issued pursuant to Rule 78 of the Federal Rules of Civil Procedure, resolves the pending cross motions of plaintiff and defendant Consolidated Rail Corporation [Conrail] for summary judgment.

This action began as a petition for review, pursuant to the Railway Labor

Act, 45 U.S.C. § 153 First (q), of a determination made by the National Railroad Adjustment Board, First Division [NRAB], formerly a defendant herein. The factual basis for plaintiff's claims before the NRAB occurred on or about July 19, 1976, when plaintiff allegedly was injured during the course of his employment as a conductor for Conrail. Plaintiff then sued Conrail, apparently under the Federal Employee's Liability Act in the United States District Court for the Eastern District of Pennsylvania. After a trial on the merits, a jury returned a verdict of no cause, said verdict being affirmed by the Court of Appeals for the Third Circuit. The United States Supreme Court denied certiorari. In 1985, plaintiff filed a claim with the NRAB, seeking an award against Conrail for the injuries allegedly received on

July 19, 1976, for injuries allegedly received as a result of the malpractice of three physicians who treated the plaintiff, for backpay, and for various employee benefits.

The NRAB dismissed plaintiff's claims for the following reasons: 1) that it did not have jurisdiction to entertain personal injury and medical malpractice damage claims, 2) that plaintiff failed to submit his claim in the proper manner and within the time required under the 45 U.S.C. § 153 First (i) and the rules governing the applicable agreement between Conrail and its employees; and 3) that plaintiff, despite repeated requests, never furnished the NRAB with documentation from his own treating physician which would dispute the conclusions of the doctors employed by Conrail. It is this determination, rendered on January 17,

1986, from which plaintiff petitions for review to this Court.

Defendant argues that summary judgment must be granted in its favor since plaintiff has failed to show the existence of any of the three narrow bases under which a District Court is permitted to review a decision of the NRAB.

In defining the scope of review of the District Court of the NRAB order, 45 U.S.C. § 153 First (q) states:

> ...the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this chapter, for failure of the order to conform or confine itself, to matters within the scope of the division's jurisdiction or for fraud or

> corruption by a member of the division making the order.

The Courts have repeatedly held that this scope of review is "among the narrowest known to the law." Brotherhood of Locomotive Engineers v. St. Louis Southwestern Railway Co., 757 F.2d 656, 660-661 (5th Cir. 1985) (citation omitted); United Steel Workers of America Local 1913 v. Union Railroad Co., 648 F.2d 905, 910 (3d Cr. 1981) (citations omitted); International Ass'n of Machinists v. Southern Pacific Transportation Co., 626 F.2d 715, 717 (9th Cir. 1980) (citations omitted). In addition, it has been held that the Court may review an NRAB decision which resulted from proceedings which lack due process, or if the decision "lacked foundation in reason or in fact." Kotakis v. Elgin, Joliet and Eastern Railway Co., 520 F.2d 570, 574 (7th Cir. 1975, cert. denied, 423 U.S. 1016

(1975). There is no indication from a review of the record, and plaintiff has not so claimed, that his due process rights were violated or that the decision lacked foundation in reason or in fact. Pursuant to 45 U.S.C. § 153 First (q) this Court has been furnished with the record of the proceedings before the NRAB and the NRAB's findings of fact and conclusions of law. The decision of the NRAB was properly based.

Recently, the Supreme Court has held that a properly brought summary judgment motion must be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 54 U.S.L.W. 4775, 4777 (U.S. June 25, 1986). In this case, under the appropriate section of the

Railway Labor Act, plaintiff would have to show that one of the three aforementioned bases for review of NRAB decisions exists, in order to prevail in his petition. He has not done so, despite having submitted voluminous exhibits to both the NRAB and to this Court in support of his claim against Conrail. (However, plaintiff has submitted no legal memoranda in opposition to defendant's motion or in support of his cross-motion.)

While there may be a dispute as to the facts surrounding plaintiff's original injuries and Conrail's liability therefor, these are not "material" facts for the purposes of a Rule 56 analysis of this petition. The question before this Court is not whether Conrail is liable for the damages sought by plaintiff (that question was previously decided by a

jury); rather, the question is whether there exists a basis for review of the NRAB decision. Thus, if plaintiff cannot show that the NRAB erred under the guidelines set forth in 45 U.S.C. § 153 First (q) then all other factual disputes concerning his underlying claim are immaterial - "a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." Id. at 4777.

In Union Pacific Railroad Co. v. Sheehan, 439 U.S. 89 (1978), the Supreme Court held that the NRAB "certainly was acting within its jurisdiction and in conformity with the requirements of the [Railway Labor] Act" when it dismissed a claim because the claimant had failed to file his appeal to the NRAB within the time limits contained in the applicable collective bargaining agreement. Id. at

93. The Court emphasized that the NRAB was created for the purpose of securing "prompt, orderly and final settlement of grievances that arise daily between employees and carriers regarding rates of pay, rules and working conditions." Id. at 94. The Court stated while that this process will normally work to the benefit of the worker, in that he will be spared the expense of various appeals if he wins, if he loses, that simply demonstrates that the statute is being applied in an even-handed manner. Id. Thus, even if the narrow scope of review may seem unfair, "[W]e have time and again emphasized that this statutory language means just what it says." Id. at 93. See also United Steel Workers of America, supra at 914.

There is no indication whatsoever from the record that the NRAB failed to comply with any of the requirements of

the statute in making its decision. There is no claim made, nor is there any indication in the record that any member of the First Division committed a fraud or performed a corrupt act. Finally, it is clear from the record that the order of the NRAB confined itself solely to matters within the Board's jurisdiction. In fact, in dismissing Counts I and II of plaintiff's claim, the NRAB clearly stated that to adjudge such Counts the Board would have to act outside the scope of its jurisdiction, as the NRAB was created for the resolution of disputes arising out of agreements between employers and employees and not disputes over personal injuries or medical malpractice.

As to plaintiff's remaining claims before the NRAB, plaintiff was given the opportunity, but chose not to refute Conrail's contention that plaintiff's

claims, prior to being submitted to the NRAB, were not "handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes..." 45 U.S.C. § 153 First (i). Plaintiff's appeal to the NRAB contained numerous procedural defects, the most notable of which is that the appeal was not filed with the NRAB within the time period proscribed the applicable employer-employee "Schedule Agreement". Plaintiff filed his appeal well over four years after Conrail's Senior Director of Labor Relations denied the request by the plaintiff's union local to have plaintiff reinstated to work.

The proceedings conducted by the NRAB and an order were entirely in conformance with the requirements 45 U.S.C. § 153. Plaintiff received due process before the NRAB. The Board's

decision was not without foundation in reason or in fact, as it did not disregard the purpose of the collective bargaining agreement which it was powered to interpret. Brotherhood of Railway Airline and Steamship Clerks v. Kansas City Terminal Railway Co., 587 F.2d 903, 906-907 (8th Cir. 1978). Plaintiff has failed to demonstrate otherwise, and, once a motion is properly brought under Fed.R.Civ.P. 56(c), "it's opponent must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Electric Industrial Co., LTD. v. Zenith Radio Corp., 106 S.Ct. 1356 (1986). Mr. Heller has not done that.

It is on this 20th day of October, 1986

ORDERED for the foregoing reasons that the motion of defendant

consolidated Rail Corporation for summary judgment be and is hereby granted.

GARRETT E. BROWN, JR.,
U.S.D.J.

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

With Referee David P. Twomey

Award 23779

Docket 43435

PARTIES TO DISPUTE (Richard J. Heller
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "1. I ask for an award account of on duty knee and spinal cord (neck) injury suffered July 19, 1976, 8:00 a.m.,

while in the performance of my duties as conductor.

"2. I ask for an award account of and against the Consolidated Rail Corporation, their officials and their Doctors, Dr. John P. Mullen, Dr. Leon Friedman, Dr. Jerald Nathan Friedman.

For:

A. Perjury

B. Fraud

C. Conspiracy

D. Discrimination

E. With-holding information

F. Distortion and fabrication

G. Knee and spinal cord (neck)

Injury July 19, 1967, spinal cord (back) injury July 29, 1976 caused by Conrail Dr. Leon Friedman striking me in my spinal cord with six needles, failure and denial to apply appropriate medical attention making my injury beyond medical help, then taking advantage of

me account of my paralyzing injury and mental enfeeblement.

"3. I ask for an award for (back pay) retroactive from July 19, 1976, October 15 and 16, 1976, August 4, 1976, March 17, 1980, March 25, 1980 and February 4, 1980.

"4. I ask for an award account of the Consolidated Rail Corporation's failure to comply with the agreement.

RULE #96
PHYSICAL DISQUALIFICATION

(a) When a trainman has been physically disqualified he shall be furnished a copy of the medical report containing the reason for disqualification.

"and

RULE #97
PLACEMENT OF PHYSICALLY RESTRICTED TRAINMEN

The Local Chairman or Local Chairmen having jurisdiction and the

Labor Relations officer will cooperate to find suitable employment for partially disabled trainmen, if practicable, when they can perform work that does not incur danger to themselves, other employees, the public or the Corporation's property.

"5. I ask for railroad retirement account of all stated above.

"6. I ask for my employee shares of railroad stocks and bonds account of all stated above.

"7. Full insurance, doctor and hospitalization.

"8. I ask for an award account of the Consolidated Rail Corporation and their officials failure to comply with the 'Lehigh Valley Railroad Company Safety Rules Book governing transportation department employees, train, engine, marine and other transportation

employees which was in effect at the time of my injury July 19, 1976.

PAGE 1. Notice

PAGE 2. Introduction

PAGE 3. RULE 1001

PAGE 4. RULE 1025

Failure to comply with the Lehigh Valley Railroad Company Book of Rules which was in effect July 19, 1976.

PAGE 1. Operating, Signal and Interlocking Rules

PAGE 4. General Notice

PAGE 7. RULE R

PAGE 21. RULE 75

PAGE 91. RULE 814

"Failure to comply with the Lehigh Valley Railroad Timetable which was in effect July 19, 1976.

RULE 1075A

PAGE 70.

This is where I signed the employee's register for work July 19,

1976, 7:45 a.m. and received instructions from Conrail yard master and then examined bulletin board and there was no written notice of switch that was spiked incorrectly".

FINDINGS: The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employees within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was held.

This is a claim in behalf of Claimant Heller, a Trainman who alleges he sustained an injury while on duty on July 19, 1976, at South Plainfield, N.J. In Count 1, the Petitioner requests the Board to award damages for "on duty knee and spinal cord (neck) injury suffered July 19, 1976"; in Count 2, an award

because of alleged malpractice by certain doctors treating his injuries; and in Count 3, an award for back pay retroactive to July 19, 1976.

We should point out initially that the Board's jurisdiction is restricted by statute to disputes involving the "interpretation and application of Agreements", and we would have no authority to grant the kind of relief requested in Counts 1 and 2 of the claims submitted, even if meritorious. See Third Division Award 19766.

The Respondent contends the various claims submitted in this case were not handled in the usual manner on the property pursuant to the provisions of Section 153, First (i) of the Railway Labor Act and the Division has no jurisdiction to consider it. In addition, the Respondent contends the claim was not progressed to this

Division in a timely fashion in accordance with Rule 91 of the controlling Agreement.

In its Reply, the Petitioner has not refuted the Respondent's arguments dealing with these issues; consequently, we have no alternative but to dismiss the claim. See First Division Awards 22941, 22781 and 22718.

Moreover, even if we could avoid these jurisdictional hurdles, and were to consider the merits of the claim, we would have to deny it, for it is apparent that claimant was repeatedly requested to submit documentary evidence from his physician disputing the conclusions of Carrier's physicians. However, he failed to furnish this information either to the Carrier or the Union so they could timely progress his dispute. The record is replete with correspondence, some furnished by

Petitioner, which clearly supports the foregoing conclusion; consequently, we have no alternative but to dismiss the claim.

AWARD Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
BY ORDER OF FIRST DIVISION

ATTEST: Nancy J. Dever
Executive Secretary

DATED AT CHICAGO, ILLINOIS, THIS 17TH DAY OF JANUARY 1986.

HELLER vs. CONSOLIDATED RAIL CORP., and THE NATIONAL RAILROAD ADJUSTMENT BOARD, FIRST DIVISION

NO. C-4368 ENTERED June 13, 1986

FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD
175 West Jackson Boulevard
Room A-931
Chicago, Illinois 60604

June 10, 1985

Re: C-4368

Mr. Richard J. Heller
R. D. #2, Box 207A
Phillipsburg, New Jersey 08865

Dear Mr. Heller:

This has reference to your letter dated May 24, 1985, File: C-4368, regarding your claim: "1. I ask for an award account of on duty knee and spinal cord (neck) injury suffered July 19, 1976, 8:00 A.M., while on the performance of my duties as conductor..."

Inasmuch as you were not given a copy of the answer as required by Circular B, kindly disregard my letter dated My 17, 1985, setting a time limit of June 16, 1985 for your reply.

A new time limit will be established upon receipt of advice that you have been given a copy of the submission.

Yours very truly,

Nancy J. Dever
Executive Secretary

WFE/RKR/njd

cc: Mr. K. F. Schwab, Senior Director,
Labor Relations:

Please furnish Mr. Heller with a copy of your Answering Submission, and advise this office accordingly.

N. J. D.

HELLER vs. CONSOLIDATED RAIL CORP., and THE NATIONAL RAILROAD ADJUSTMENT BOARD, FIRST DIVISION

NO. C-4368 ENTERED June 13, 1986

June 13, 1985

Mr. Richard J. Heller
R. D. #2, Box 207A
Phillipsburg, N.J. 08865

Dear Sir:

In accordance with the letter of June 10, 1985, from Miss Nancy J. Dever,

Executive Secretary, National Railroad Adjustment Board, First Division, attached hereto is a copy of our Answering Submission in Case Number C-4368.

Very truly yours,

K. F. Schwab
Senior Director-Labor Relations

cc: Miss Nancy J. Dever
Executive Secretary
National Railroad Adjustment Board
First Division
175 West Jackson Blvd Rm A931
Chicago, IL 60604

HELLER v. CONSOLIDATED RAIL CORP., and THE NATIONAL RAILROAD ADJUSTMENT BOARD, FIRST DIVISION

NO. C-4368 ENTERED June 13, 1986

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

November 12, 1970

CIRCULAR B

(Ex Parte Submissions)

The party or parties making an ex parte submission shall, at the time of filing the submission with the Division, furnish a copy of such submission to the other party or parties to the dispute. The other party or parties to such dispute shall have thirty (30) days from the date of notification by the First Division that the submission has been received in which to answer such submission and shall, at the time of filing such answer, furnish copy of the answer to the submitting party or parties.

The submitting party or parties shall then have thirty (30) days from the date of notification by the Division that such answer has been received in which to file a reply to such answer if desired, and, such reply shall be limited to response to the answer and

shall contain no new facts or matter not in direct response to the points contained in such answer.

Nothining herein shall change existing rules or practices with respect to extensions of time and they shall be applicable to submissions, answers, or replies.

Notice to the Secretary, First Division, of intention to file ex parte submission, is not required.

By direction of the Division.

Executive Secretary
National Railroad
Adjustment Board

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 86-5776

RICHARD HELLER

v.

CONSOLIDATED RAIL CORP., and THE NATIONAL RAILROAD ADJUSTMENT BOARD FIRST DIVISION

Richard Heller, Appellant

(Civil No. 86-0608 - Dist. of N. J. - Trenton)

SUR PETITION FOR REHEARING

PRESENT: SEITZ, WEIS, HIGGINBOTHAM, SLOVITER, BECKER, STAPLETON, and MANSMANN, Circuit Judges.

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for

rehearing by the court in banc, the petition for rehearing is denied.

By the Court

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Circuit Judge

DATED: Apr. 16, 1987